

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

PCI CONTRACTORS, INC.

Employer

and

Case 28-RC-6272

**INTERNATIONAL UNION OF BRICKLAYERS
& ALLIED CRAFTWORKERS, LOCAL 3, ARIZONA,
NEW MEXICO, TEXAS, AFL-CIO**

Petitioner

and

**NEW MEXICO PLASTERERS AND CEMENT
MASONS, LOCAL NO. 254, OPERATIVE PLASTERERS
AND CEMENT MASONS INTERNATIONAL
ASSOCIATION, AFL-CIO, CLC**

Intervenor

DECISION AND ORDER

The International Union of Bricklayers & Allied Craftworkers, Local 3, Arizona, New Mexico, Texas, AFL-CIO (the Petitioner), seeks an election within a unit comprised of all journeymen and apprentice plasterers employed by the Employer. The New Mexico Plasterers and Cement Masons, Local No. 254, Operative Plasterers and Cement Masons International Association, AFL-CIO, CLC (the Intervenor), contends that, before the filing of the instant petition, it entered into a collective-bargaining agreement that constitutes a contract bar to the petition. The Petitioner argues that a valid agreement did not exist at the time the petition was filed because the contract failed to identify the parties to the agreement, failed to adequately establish the effective date, and failed to include substantial terms and conditions of employment sufficient to stabilize the bargaining relationship. The Petitioner further argues that, if a valid agreement did exist when the petition was filed, that agreement was a premature extension of an earlier agreement that was set to expire on June 30, 2004.¹ Finally, the Petitioner argues that, even if the contract bar doctrine could apply, I should exercise my discretion not to apply it, because the Intervenor has engaged in a scheme to deprive employees of their right to select their bargaining representative. The Intervenor contends

¹ Unless otherwise noted, all dates are 2004.

that the agreement was sufficient to create a contract bar and that the premature extension doctrine is inapplicable under the facts of this case. The Intervenor also contends that the Employer's voluntary recognition of it as a Section 9(a) representative of the unit employees gives rise to a recognition bar.

Based on the reasons set forth more fully below, I shall dismiss the petition, because the record in this matter supports a finding that an adequate collective-bargaining agreement existed as of the petition's filing date of April 19 and because the premature extension doctrine does not apply where the earlier agreement that was supposedly extended could not serve as a contract bar.

DECISION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. **Hearing and Procedures:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. **Jurisdiction:** The Employer, PCI Contractors, Inc., is a New Mexico corporation with its principal office in Santa Fe, New Mexico, where it is engaged in the business of plaster and mason contracting in the building and construction industry. The parties have stipulated, and I find, that during the 12-month period ending May 19, 2004, the Employer, in the course and conduct of its business operations described above, purchased and received goods valued in excess of \$50,000 from suppliers within the State of New Mexico, which suppliers, in turn, purchased and received said goods directly from suppliers located outside the State of New Mexico. The Employer is engaged in commerce within the meaning of the Act, and, therefore, the Board's asserting jurisdiction in this matter will accomplish the purposes of the Act.

3. **Claim of Representation:** The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer. The Intervenor is a labor organization within the meaning of Section 2(5) of the Act and also claims to represent certain employees of the Employer.

4. **Statutory Question:** As more fully set forth below, no question concerning commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

A. Background

The Employer has operated in the building and construction industry since 1971, specializing in the installation of metal studs, drywall, insulation, drywall finishes, and exterior coatings. Gilbert Duran has served as the Employer's President since its inception and, in that capacity, oversees all of the Employer's operations. At the time of the petition,

the Employer employed eight journeyman or apprentice plasterers, in addition to an unspecified number of other employees.

The parties have stipulated, and I find, that the Employer and the Intervenor have a five or six year bargaining history, which is reflected in successive Section 8(f) contracts.² The most recent 8(f) contract was effective by its terms from July 1, 2001, through June 30, 2004 (2001 Contract).³ The record establishes that the Employer and two other contractors – Les File Drywall, Inc. and Harrison Contracting Company, Inc.⁴ – bargained over the terms of the 2001 Contract. This resulted in a “form” agreement. Each contractor separately signed a copy of the form agreement, each of which was also signed by the Intervenor. In the recitals, the contracts, including the contract signed by the Employer, stated that they were entered into “by and between the Independent Plastering Contractors,” even though the contractors were not members of any such association and, in fact, there was no such entity. The Intervenor occasionally uses similar recital language referencing independent contractors in other contracts in other parts of the country.

In early 2002, the Operative Plasterers and Cement Masons International Association, AFL-CIO, CLC (the International), began a national campaign to convert its locals’ Section 8(f) contracts to Section 9(a) contracts.⁵ Mauricio Robles, an organizer for the International, was assigned to assist locals in California, Nevada, Illinois, Michigan, Pennsylvania, Massachusetts, and New Mexico to convert their agreements. Robles first began work on this project in New Mexico on December 9, 2003, at which time he and Narciso Mascarenaz, the Intervenor’s Business Manager/Financial Secretary, convinced Les File Drywall to sign a Section 9(a) contract. The term of this new contract was from December 9, 2003, to June 30, 2004, the expiration date of the Section 8(f) contract it replaced. The Intervenor was unaware of any rival union activity in New Mexico in December 2003.

After the new Les File Drywall contract was signed, Robles was temporarily reassigned to another state for approximately one month.

² Under Section 8(f) of the Act, an employer engaged primarily in the building and construction industry may enter into an agreement covering employees engaged such work with a labor organization where the majority status of the labor organization has not been established under Section 9(a) of the Act.

³ Although the Intervenor was unable to produce at the hearing an exact copy of the 2001 Contract signed by the Employer, it did produce an identical contract. The record conclusively establishes that the Employer and the Intervenor entered into this contract and that the term of the contract was for three years, commencing July 1, 2001, and ending June 30, 2004.

⁴ Administrative notice is hereby taken of these employer’s correct names as listed on the New Mexico Public Regulation Commission website.

⁵ Under Section 9(a) of the Act, an employer may be required to recognize and bargain with a labor organization that has been designated for the purposes of collective bargaining by a majority of employees in an appropriate unit.

B. The Events of March 8-11

On March 8, Anthony Tapia, a Field Representative/Organizer for the Petitioner, made the first contact for the Petitioner with various employee plasterers represented by the Intervenor, including employees of Harrison Contracting Company and the Employer. Both groups of employees expressed an interest in hearing what the Petitioner had to offer, and the Petitioner set up informational meetings for the two groups on March 10 and 11, respectively.

On March 9, at approximately 9:00 a.m., Tapia received a telephone call from Mascarenaz. Mascarenaz asked why Tapia was “trying to organize my people,” and Tapia responded that he was merely following instructions from his international union. Mascarenaz then threatened to organize employees already organized by the Petitioner and suggested the unions were “going to war.” Tapia agreed. There was no specific mention of the Employer or its employees during this conversation.

Also on March 9, the Intervenor began soliciting authorization cards from the Employer’s employees and received signed cards from approximately five or six of the Employer’s employees.

On March 10, Robles and Mascarenaz met with the Employer’s President, Duran, over lunch. The purpose of this meeting was to convince Duran to convert the Employer’s Section 8(f) relationship to a Section 9(a) one. During this meeting, Mascarenaz told Duran that the Petitioner was talking to plasterers in Albuquerque and that it would probably talk to his employees. Mascarenaz also told Duran that a Section 9(a) contract would preclude the Petitioner from representing his employees and preserve the relationship between the Employer and the Intervenor. Mascarenaz also advised Duran that, by signing a Section 9(a) contract, the Employer would lose its ability to walk away from the contract at the end of its term. Duran’s only question was whether any of the Employer’s competitors had signed a Section 9(a) contract. Mascarenaz informed Duran that Les File Drywall had done so, and Duran stated that he too would do so after confirming this with Les File. Duran also asked how he would recognize the Intervenor as a 9(a) representative. Robles suggested a new contract. Duran responded that a new contract would be acceptable. Robles and Mascarenaz told Duran they would return the next day with authorization cards and a contract. The entire conversation regarding the Section 8(a) to 9(f) contract conversion lasted only a few minutes.

On March 11, in the morning or early afternoon, Robles and Mascarenaz met with Duran at the Employer’s office. Robles and Mascarenaz first showed Duran the authorization cards they had obtained from a majority of the Employer’s employees. Duran inspected each of these cards and confirmed that they were signed by the Employer’s employees. Duran also had the Employer’s controller, John Maloney, do the same. After Maloney inspected the cards, Duran stated “I recognize you as the representative on my plasterers and will sign that agreement.” Robles provided Duran with the new contract and pointed out the Section 9(a) recognition language, as well as Art. XIV, which provided that the contract would commence on April 1. Robles explained that an April 1 commencement date would be easier for the Intervenor to administer. Duran did not comment on the April 1 start date. Robles also asked Duran if he would negotiate wages at a later date when all of the other contractors met, as had

been done in the past.⁶ Duran stated, “yeah, that’s how it’s usually done, we all sit together and negotiate these things.” Duran then signed the contract (the 2004 Contract).

The 2004 Contract was virtually identical to the 2001 Contract. The only significant changes between the two were the addition of the Section 9(a) recognition language and the term of the contract, which ran from April 1, 2004, to March 31, 2007.⁷ Thus, the 2004 Contract contained the same recital and the same provisions with respect to settling jurisdictional disputes, union security, stewards, referral procedures, work rules (including work hours, overtime, show up time, and holidays), grievance procedures, fringe benefits, and lockouts. The 2004 Contract’s wage rate provision was also unchanged from the 2001 Contract. In other words, it contained wage rates with effective dates of July 1, 2001, July 1, 2002, and July 1, 2003. The record demonstrates that the parties did not intend for the 2004 Contract to govern their relationship with respect to wages after July 1.

In the evening of March 11, after the Employer had signed the 2004 Contract, the Petitioner held its informational meeting with the Employer’s employees. At this meeting, the Petitioner solicited and received signed authorization cards from a majority of the Employer’s employees.

C. The Petitioner’s Attempts to Obtain Recognition

On March 23, Field Organizer Tapia spoke with Duran at one of the Employer’s job sites. Seeking to ascertain whether the Intervenor was the exclusive representative of the Employer’s employees, Tapia asked Duran if the Intervenor had 9(a) status. Duran stated that he did not know, but that he could find out from Mascarenaz. Tapia gave Mascarenaz’s telephone number to Duran, and Duran called him. Duran told Mascarenaz that the Petitioner was at the site and wanted to know if the Employer had 9(a) status. After speaking with Mascarenaz, Duran told Tapia, “[Mascarenaz] said no, I mean [Mascarenaz] said yes, we do have 9(a) status.”

On March 24, the Petitioner filed a petition in Case 28-RC-6267. On April 12, after an administrative investigation, I determined that the parties’ existing relationship had converted to a Section 9(a) relationship, that their subsequent contract was one based on Section 9(a) and, as such, it served as a bar to the petition. I further found that, because the Petitioner did not have a 30-percent showing of interest at the time the Employer granted 9(a) recognition, the petition was barred by the Employer’s voluntary recognition of the Intervenor. I, therefore, dismissed the petition. The Petitioner did not seek review of the dismissal of the petition.

⁶ The record establishes that the reason for this practice is that the Intervenor’s form agreements contain a most-favored-nations provision. Under this provision, if the Intervenor negotiates lower wages or more favorable conditions of employment in a bargaining agreement, those rates or conditions apply to other contractors. Thus, the Intervenor generally negotiates with all contractors over wages and fringe benefits at one time.

⁷ The 2004 Contract also contained an apparent word processing error in Art. XIV. Specifically, the term provision also states “or any subsequent March 30, 2007. Immediately preceding any such March 30 Termination Date. (See Paragraph 3, Reopening)” Notwithstanding this error, the record is clear that the parties intended a 3-year term, commencing on April 1.

Subsequently, on April 19, the Petitioner filed the petition in the instant case.

D. Legal Analysis and Determination

When the circumstances are appropriate, the existence of a collective-bargaining agreement will preclude, or bar, a Board representation election involving employees covered by the contract. The Board's contract-bar doctrine is intended to achieve "a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives." *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161 (1958). Its "fundamental premise [is] that the postponement of employees' opportunity to select representatives can be justified only if the statutory objective of encouraging and protecting industrial stability is effectuated thereby." *Pacific Coast Assn. of Pulp & Paper Mfrs.*, 121 NLRB 990, 994 (1958). "Thus, in general, the doctrine's dual rationale is to permit the employer, the employees' chosen collective-bargaining representative, and the employees a reasonable, uninterrupted period of collective-bargaining stability, while also permitting the employees, at reasonable times, to change their bargaining representative, if that is their desire." *Direct Press Modern Litho, Inc.*, 328 NLRB 860 (1999).

The contract-bar doctrine "is not compelled by the Act or by judicial decision; [on the contrary,] [i]t is an administrative device early adopted by the Board in the exercise of its discretion as a means of maintaining stability of collective bargaining relationships." *Ford Motor Co.*, 95 NLRB 932, 934 (1951). The Board has the discretion to apply a contract bar or waive its application consistent with the facts of a given case, guided by the Board's interest in stability and fairness in collective-bargaining agreements. *Direct Press Modern Litho*, supra at 860-61.

The "premature extension" rule is one of many components of the contract-bar doctrine. Generally, should the parties to a collective-bargaining agreement agree, during its term, to extend the contract's expiration date, the Board considers the contract prematurely extended, and a representation petition will not be found contract barred if filed during the open period dictated by the agreement's original termination date. *Id.*; *Auburn Rubber Co.*, 140 NLRB 919, 920 (1963); *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1001 (1958). The rationale "is to afford employees who wish to change collective-bargaining representatives and outside unions who wish to represent the employees a reasonable measure of predictability in scheduling their organizational activities and campaigns." *Direct Press Modern Litho*, supra at 861, citing *Auburn Rubber*, supra at 921.

As noted earlier, the Petitioner argues that there can be no contract-bar here because: (1) the 2004 Contract is invalid for various reasons, and (2) even if the 2004 Contract were valid, it amounts to a premature extension of the 2001 Contract, which was set to expire on June 30. The Petitioner also argues that, if the contract-bar doctrine could apply, I should exercise my discretion not to apply it in this case, because the Intervenor has sought to deprive employees of their right to select their bargaining representative. I will address each of these arguments in turn.

1. The Validity of the 2004 Contract

The Petitioner contends that there can be no contract bar in this case because there is no valid contract. In order for an agreement to serve as a bar to an election, the Board's well-established contract-bar rules require that such agreement satisfy certain formal and substantive requirements. The agreement must be signed by the parties prior to the filing of the petition that it would bar, and it must contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship. *USM Corp.*, 256 NLRB 996, 999 n.18 (1981), citing *Appalachian Shale Products. Co.*, *supra*.

The Petitioner first argues that the 2004 Contract is invalid because the Employer "is mentioned nowhere in the document and it is impossible from reviewing the face of the document that it is a collective bargaining agreement between Intervenor and [the Employer]." The record establishes, however, that the agreement is signed by Duran, the President of the Employer, on the Employer's behalf, and contains the Employer's address, telephone number, contractor's state license number, workers' compensation insurance carrier information, and FICA account number. The record also establishes that the parties intended to be bound by the contract and, indeed, have complied with the terms of the contract since its execution. In these circumstances, there is no question as to the identities of the parties to the 2004 Contract.

The Petitioner also argues that the 2004 Contract is invalid because there is some question regarding its effective date. This argument is not supported by the record. The 2004 Contract expressly provides that "[T]his agreement shall commence as of April 1, 2004 and shall remain in effect until March 31, 2007" While there was some testimony that the parties considered themselves bound to an agreement prior to April 1, that testimony is wholly consistent with the parties' understanding that the Employer's voluntary recognition of the Intervenor as a 9(a) representative changed the character of their relationship which was manifested in a new agreement under Section 9(a). As noted above, the record demonstrates that the parties discussed the April 1 commencement date at the time the 2004 Contract was signed and that the parties had no questions or misperceptions as to the actual commencement date of that agreement. Finally, the record fails to establish that any question concerning the start date of the 2004 Contract affected the actions of any of the parties in this case. The Board has held that a "slight disparity in expiration dates [that have] no effect at all on employee free choice [] should not be deemed grounds for finding that the contract is not a bar to [a] petition." *Suffolk Banana Co., Inc.*, 328 NLRB 1086, 1087 (1999)

Finally, the Petitioner argues that the 2004 Contract is invalid because it was not intended to establish wage rates beyond June 30. However, "the Board has never held that the failure of a contract to contain or delineate every possible provision which could appear in a collective-bargaining agreement negates the bar quality of such a contract." *Stur-Dee Health Prods., Inc.*, 248 NLRB 1100, 1101 (1980). Accord, *USM Corp.*, *supra* at 999, n. 18. Thus, the Board has consistently found contracts to constitute a bar even though they did not clearly set forth wage provisions or left such matters to future negotiation. See *Cooper Tank & Welding Corp.*, 328 NLRB 759, 760 (1999); *Stur-Dee Health Prods.*, *supra* at 1101; *Levi*

Strauss & Co., 218 NLRB 625, 626 (1975); *Youngstown Osteopathic Hospital Assoc.*, 216 NLRB 766, 766-67 (1975); *Billboard Publishing Co.*, 108 NLRB 182, 183 (1954); *Spartan Aircraft Co.*, 98 NLRB 73, 74-75 (1952). In *Spartan Aircraft*, the Board found an otherwise detailed contract which contained a provision stating that the employer and the union would “endeavor to agree upon the proper classification and hourly rate ranges as soon as possible” sufficiently complete to constitute a contract bar. *Supra*, at 74. Similarly, in *Cooper Tank*, the Board held that a contract which failed to set forth specific wage rates for employees could nonetheless serve as a bar where it was, in all other respects, complete: “[t]hat a contract of this dimension does not include a specific wage provision as such is, in this context, insufficient to render it null for bar purposes.” *Supra* at 759.

The 2004 Contract contains 17 articles which address significant terms and conditions of employment, including, among other things, union stewards, settling jurisdictional disputes, union security, referral procedures, work rules (including work hours, overtime, show up time, and holidays), grievance procedures, fringe benefits, and lockouts. Under the authority cited above, I conclude that the 2004 Agreement contains substantial terms of employment more than sufficient to stabilize the parties’ collective-bargaining relationship and act as a bar.

Although not cited by the parties, I have also considered the Board’s decision in *Madelaine Chocolate Novelties*, 333 NLRB 1312 (2001). In *Madelaine Chocolate Novelties*, the employer and the union were parties to a 9(a) contract with a 4-year term. Two days before the start of the fourth year of the contract, the parties signed a new 4-year agreement that adopted the final year of the predecessor contract and left all economic items for the second, third, and fourth years open. The Board held that the new contract could not serve as a bar to a subsequently-filed petition because it lacked substantial terms and conditions necessary to stabilize the parties’ relationship. *Id.*

I do not find *Madelaine Chocolate Novelties* apposite to this case because it deals with the special situation in which there is a contract in excess of three years. In such cases, the Board has long held that when, after the end of the first three years of a long-term contract, the parties incorporate by reference the terms and conditions of the long-term contract or a written amendment which expressly reaffirms the long-term agreement and indicates a clear intent on the part of the contracting parties to be bound for a specific period, the new agreement or amendment is effective as a bar for as much of its term as does not exceed three years. *Southwestern Portland Cement Co.*, 126 NLRB 931 (1960); *Santa Fe Trail Transp. Co.*, 139 NLRB 1513, 1514 n.2 (1962); *Shen-Valley Meat Packers*, 261 NLRB 958 (1982); *M.C.P. Foods*, 311 NLRB 1159 (1993). The Board in *Madelaine Chocolate Novelties* simply applied these cases and held that the petition filed in the fourth year of a long-term contract was not barred because the evidence was insufficient to establish that the parties took sufficient steps to extend or reaffirm the contract during its term.

In contrast, in this case, the Employer and the Intervenor were not seeking to extend or reaffirm a long-term 9(a) contract beyond three years. Rather, the parties in this case had experienced a significant change in their relationship – the Intervenor changed from a Section

8(f) to a Section 9(a) representative. When this change occurred, the Intervenor was entitled to negotiate a new agreement with the Employer. See *Packerland Packing Co.*, 181 NLRB 284 (1970). Under the Board's decisions in *Spartan Aircraft Co.*, supra, and its progeny, which apply the traditional *Appalachian Shale Products Co.* criteria, in cases of new contracts, the parties are not required to specifically set forth all wage provisions.

2. The Alleged Premature Extension

The Petitioner also contends that, even if the 2004 Contract is valid, it constitutes a premature extension of the 2001 Contract, because it was signed before the 30-day open-window period for filing a petition. Specifically, the 2001 Contract was scheduled to expire on June 30. The 30-day open-window period for filing a petition (assuming that the 2001 Contract barred a petition) would, therefore, begin on April 2. The 2004 Contract, however, was signed on March 11, with an effective date of April 1.

The Petitioner's argument is contrary to established Board precedent. The Board has held that Section 8(f) agreements cannot serve as a bar to a petition. *John Deklewa & Sons*, 282 NLRB 1375, 1385 (1987). The Board has also held that the premature extension doctrine does not apply where the contract at issue cannot serve as a bar. *Cushman's Sons, Inc.*, 88 NLRB 121, 123 (1950). In this case, there can be no question that, prior to March 11, the 2001 Contract was an 8(f) agreement. Therefore, that agreement could not serve as a bar to a petition and, contrary to the Petitioner's position, could not have an open period. What could be considered the 2001 Contract's "open period," in effect, was at any time before March 11, the date that the 8(f) agreement was extinguished and the Section 9(a) agreement was entered into.

The Petitioner's apparent contention that the Employer's recognition of the Intervenor as a Section 9(a) representative "converted" the 2001 Contract to a Section 9(a) agreement and thus made it possible for that agreement to have an open period is also unpersuasive. As a starting point, the Board has held that parties to an existing contract are entitled to negotiate a new agreement upon a change in their bargaining relationship. In *Packerland Packing Co.*, 181 NLRB 284 (1970), the employer voluntarily recognized the incumbent union, and the parties signed a contract effective from 1966 to 1969. In June 1966, a rival union filed a petition. The parties agreed to a consent election, which the incumbent union won. After it was certified, the incumbent union and the employer replaced the existing 1966-1969 contract with a new agreement effective from June 1967 to June 1970. The rival union filed another petition in June 1969, which was during the 30-day open period of the 1966-1969 contract. The rival union argued that the 1967-1970 contract was a premature extension and could not act as a contract-bar. The Regional Director agreed and directed an election. The Board reversed and ordered the petition's dismissal:

The Employer, in its request for review, contends that its current contract, having been negotiated during the [incumbent union's] certification year, is not subject to the premature extension doctrine. We find merit in this contention. Here, in our judgment, the contractual parties were entitled to replace their existing agreement, which was negotiated before the initiation

of the proceeding which resulted in the [incumbent union's] certification, with a new agreement for a term of reasonable duration during which the incumbent would be free from a challenge to its representative status.

Id. at 284.

Similarly, in this case, when the parties' relationship changed from Section 8(f) to 9(a) status, they signed a new agreement. The 2004 Contract, signed contemporaneously with the change in status, had the following effects: (1) it served to cancel the 2001 8(f) Contract; (2) it effectively re-adopted a modified version of the 2001 Contract as a 9(a) agreement, valid for only 20 days, i.e., March 11 through March 31; and (3) it created a new, 3-year agreement, effective from April 1 through March 31, 2007. Any other reading of the parties' March 11 agreement would mean that they would be subjecting themselves to two, concurrently running contracts for the period of April 1 through June 30, or that there was no contract in existence at all from March 11 until April 1. Any reasonable interpretation of the Employer's and Intervenor's actions leads to the conclusion that the 8(f) contract's existence was extinguished on March 11.

Because the 2001 8(f) Contract could not serve as a contract-bar until March 11, under the rationale of *John Deklewa & Sons* and *Cushman's Sons*, supra, there could be no premature extension of this contract. Further, because on March 11, the 2001 8(f) Contract was extinguished and replaced with a modified 9(a) agreement effective for a term of only 20 days, there could be no premature extension of this new agreement, because it was of insufficient duration to have an open period. See *Suffolk Banana Co., Inc.*, supra at 1087 n.4 (1999) (under the Board's contract-bar rules, a representation petition is timely filed only if it is submitted during the 30-day open period running from the 90th day to the 60th day prior to the existing contract's termination date).

This analysis recognizes and gives full effect to the competing policies underlying the contract-bar doctrine and the open-period rule. As noted above, the goal of the contract bar doctrine is to maintain the "stability of collective bargaining relationships." *Ford Motor Co.*, supra at 934 (1951). The purpose of having an open period during which a petition may be filed is to prevent the situation where an employer and a union can prevent employees, employers, or other unions from filing a petition. The Board has balanced these competing interests and held that a contract may only bar petitions for a maximum of three years. *General Cable Corp.*, 139 NLRB 1123, 1125 (1962). This case does not present a situation in which the Employer's employees or the Petitioner will be precluded from filing a petition for more than three years. Prior to March 11, the Petitioner, the employees, and the Employer were free to file a petition for representation but did not. The new contract which commenced on April 1 has a duration of three years. Employees will be free to file a petition during the open period of this contract.

3. The Discretionary Application of the Contract-Bar

Finally, the Petitioner urges that I should exercise my discretion and refrain from applying the contract-bar doctrine, because the Intervenor has schemed to deprive employees of their right to select their bargaining representative.

The record establishes that the requirements for voluntary recognition were satisfied on March 11, and that the Section 9(a) relationship began on that date. Specifically, the Intervenor provided evidence of majority support to the Employer, the Employer inspected such evidence and, based thereon, expressly acknowledged the Intervenor's 9(a) status. See *NLRB v. A. Lasaponara & Sons, Inc.*, 541 F.2d 992, 995-96 (2nd Cir. 1976) (affirming Board's finding that voluntary recognition occurred verbally on December 14, 1973, when employer agreed to recognize union, rejecting employer's claim that it deferred recognition until after sale negotiations with another entity were completed).

The Petitioner argues that the voluntary recognition on March 11, was not undertaken in good faith, but rather was motivated by the parties' knowledge that the Petitioner was organizing the Employer's plasterers. This argument is not supported by the record evidence. The record reflects that the Employer and the Intervenor had a stable five or six-year bargaining relationship before voluntary recognition was extended; the Intervenor had a national campaign to convert its 8(f) relationships to 9(a) status; and this campaign had commenced in New Mexico before any organizing activity by the Petitioner. The record also establishes that the Employer's primary consideration in extending 9(a) recognition was what its primary competitor, Les File Drywall, had done so, and that Les File Drywall had voluntarily recognized the Intervenor in December 2003. Lastly, as noted above, the record establishes that the Petitioner, or any other party, was free to file a petition at any time before March 11, when the Intervenor was merely a Section 8(f) representative.

In sum, I conclude that the reasons asserted by the Petitioner for the proposition that no contract bar should be found or applied are, based on the record evidence before me and the law, not persuasive, and that the contract between the Employer and the Intervenor serves as a bar to the petition.⁹ Accordingly, I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

⁹ Because I have determined that the contract between the Employer and the Intervenor bars the petition, I do not need to reach the Intervenor's contention that the petition is barred by virtue of the Employer's voluntary recognition. In any event, I note that the Board has held that the contract bar and the recognition bar cannot run concurrently. See *VFL Technology Corp.*, 329 NLRB 458 (1999).

REQUEST FOR REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC, 20570. The Board in Washington must receive this request by June 24, 2004. A copy of this request for review should also be served on me.

Dated at Phoenix, Arizona, this 10th day of June 2004.

/s/Cornele A. Overstreet

Cornele A. Overstreet, Regional Director
National Labor Relations Board – Region 28